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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,915	11/21/2003	Richard B. Trocino	41833-P001US	2396
7590	09/12/2005		EXAMINER WALCZAK, DAVID J	
Kelly K. Kordzik Winstead Sechrest & Minick P.C. P.O. Box 50784 1201 Main Street Dallas, TX 75250-0784			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 09/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/718,915

Applicant(s)

TROCINO, RICHARD B.

Examiner

David J. Walczak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/21/03 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)          |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/21/03</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election***

Applicant's election without traverse of Group I in the reply filed on 5/27/05 and Species I in a telephone interview on 8/26/05 is acknowledged. Claims 1-13 are readable on the elected group/species and will be examined herein. Claims 14-16 are withdrawn from further consideration and claims 17-20 have been canceled.

### ***Drawings***

The drawings are objected to because in Figures 8A and 8C, reference characters 801 should be 209 and in Figure 12A, 201 should be 104 in order to render these figures consistent with the rest of the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top

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margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities: On page 11, line 11, "801" should be --209--, on page 11, line 14, "808" should be --805--, on the last line of page 11, "1202" should be --1102--, on page 12, line 1, "1201" should be --1101--, on page 12, line 3, "201" should be --104--, on page 12, line 11 "14B" should be --14D-- and on page 12, line 20, "1503" should be --1508--. Further, reference character 1505 is used to denote two different elements (see page 12, lines 17 and 23). Lastly, reference characters 1401, 1402, 1404 and 1405 (Figures 14A and 14B) are not present in the specification. Appropriate correction is required.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The claims are replete with terms which do not have antecedent basis in the specification, i.e., the terms "bristle section" (claim 1), "toothpaste tube end", "the threads of a plurality of off-the-shelf toothpaste tubes" and "toothbrush end" (claims 4 and 12), "head end" and "tail end" (claim 6) does not have antecedent basis in the specification. Further the recitation of the plunger head being rotatable (claims 1 and 8) does not have antecedent basis in the specification. The

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Applicant should carefully review all of the claims to ensure that all of the language therein has antecedent basis in the specification.

***Claim Rejections - 35 USC § 112***

Claims 2, 3, 10 and 11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In regard to claims 2 and 10, the specification does not define a toothpaste chamber that has a first cap feature for engaging a cap. The specification defines such a first cap feature 302 as being positioned on the head 101, but not on the toothpaste chamber 105.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. An antecedent basis for "the exposed portion of the plunger assembly" (see line 2) should be defined.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Flom. Flom discloses a toothbrush assembly comprised of a toothbrush head 14 having a bristled section coupled to a shaft encasing a channel 17 and a threaded end 13, a toothpaste chamber 10 having a brush end for receiving the threaded end of the head and an open plunger end and a removable plunger assembly having a plunger head 24 extending into and sealing against the inside surface of the chamber wherein only a surface of the head is exposed to toothpaste in the chamber as the head rotates within the chamber and moves laterally to modify a volume of the chamber.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flom. Flom discloses a cap 27 having a "second cap feature" (threads, see Figure 2) which mate with a "first cap feature" (mating threads) on the brush end of the chamber. Although the Flom reference does not disclose an O-ring between the cap and chamber, as claimed, the Examiner takes official notice that such O-rings are commonly employed onto threaded caps in order to render the cap sealed to the chamber. Accordingly, it would have been obvious to one of ordinary skill in the

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art at the time the invention was made to dispose such an O-ring onto the chamber of the Flom device in order to enable the cap to sealingly engage the chamber.

Claims 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flom in view of Miles. Although the Flom reference does not disclose the use of a threaded adapter for coupling a tube of toothpaste to the brush end of the chamber in order to refill the chamber, attention is directed to the Miles reference, which discloses such an adapter 26 in order to securely connect a tube of toothpaste to the brush end of the chamber in order to enable the chamber to be refilled. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such an adapted onto the threaded brush end of the chamber in the Flom device in order to enable the chamber to be easily and conveniently refilled.

Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flom in view of Tower. Although the Flom device does not include a flexible tube coupled to the bristle opening, attention is directed to the Tower reference, which discloses another dispensing toothbrush wherein a flexible tube E is coupled to a bristle opening in order to enable the toothpaste to be dispensed near the top of the bristles. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such a flexible tube onto the opening 18 of the Flom device in order to enable the toothpaste to be dispensed near the top of the bristles.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flom in view of Hsu. Although the plunger assembly used in the Flom device is not structured as claimed, attention is directed to the Hsu reference, which discloses

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another dispensing brush having the claimed threaded plunger 40, a nut 60 which engages a "flange" (the lower surface of piston 16) to determine how far the plunger extends into the chamber wherein the nut is prevented from rotating relative to the chamber (see column 3, lines 50-65) and a twist knob 50 coupled to the chamber. It is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the plunger assembly disclosed by Flom with the Hsu plunger assembly wherein such a modification would amount to the mere substitution of one functionally equivalent plunger assembly for another and the selection of either assembly would work equally well on the Flom device.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Labranche et al. and Adames references are cited for disclosing other toothbrush assemblies having O-ring type seals between the cap and the chamber in order to secure the cap to the chamber.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
8/29/05